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Frank J. Martinez (FJM-2149)
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Attorney Docket: 1235-2

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK**

-----X
SUSAN HAPPERSETT,
and
ESTHER K. SMITH, d/b/a, Purgatory Pie Press,
and
DIKKO FAUST, d/b/a, Purgatory Pie Press,

Plaintiffs,

-against-

ANTHROPOLOGIE, INC.,

Defendant.
-----X

09 1556
CV

COMPLAINT

(Jury Trial Demanded)

BLOCK, J.

LEVY, M.J.

Plaintiffs, SUSAN HAPPERSETT, an individual and ESTHER K. SMITH, d/b/a PURGATORY PIE PRESS, and DIKKO FAUST, d/b/a/ PURGATORY PIE PRESS (collectively "Plaintiff" or "PPP"), by and through its attorneys, The Martinez Group PLLC, for its Complaint against Defendant, ANTHROPOLOGIE, INC., ("Defendant" or "Anthropologie"), hereby alleges as follows:

NATURE AND SUBSTANCE OF THE ACTION

1. Plaintiff files this action against Defendant for Copyright infringement under 17 U.S.C. § 101, et seq., and Unfair Competition under the Lanham Act, 15 U.S.C. § 1125(a) and applicable State laws.

2. This action is brought in response to a classic case of Copyright infringement; specifically, the unauthorized copying and commercial, for-profit manufacture and distribution of a commercial product bearing an unauthorized copy of Plaintiff's limited edition Work entitled FIBONACCI FLOWER (the "Work").
3. In particular, Defendant has infringed Plaintiff's FIBONACCI FLOWER Work by using the artwork embodied therein to manufacture, distribute and sell a product known as the Colossal Bloom Rug (the "Rug").
4. Title 17 of the United States Code (Copyright Act) was enacted to provide remedies to copyright owners who suffer damages by reason of such actions.

JURISDICTION AND VENUE

5. This is an action for Copyright infringement arising under the Copyright Act, 17 U.S.C. § 101 et seq., and for the related claims of Unfair Competition under 15 U.S.C. § 1125(a) and applicable State laws, which seeks damages by reason of Defendant's ongoing infringement of Plaintiff's valid and subsisting Copyright and Unfair Competition under Federal law and applicable state law.
6. This Court has jurisdiction of this action under 28 U.S.C. §§ 1331, 1332, 1338(a) and 1338(b), its supplemental jurisdiction, and under Rule 4 of the Federal Rules of Civil Procedure.
7. Venue is proper in this district under 28 U.S.C. §1391 and §1400 in that Defendant or Defendant's agents may be found in this District and Defendants transact business in this District.

PARTIES

8. Plaintiff Susan Happersett is an individual, and an artist and a co-author of the FIBONACCI FLOWER Work identified herein and for the purposes of this action, has a place of business located at 19 Hudson Street, Suite 403, New York, New York, 10013.
9. Plaintiff Esther K. Smith is an individual and an artist, d/b/a Purgatory Pie Press and is a co-author of the FIBONACCI FLOWER Work identified herein and has a place of business located at 19 Hudson Street, Suite 403, New York, New York, 10013.
10. Plaintiff Dikko Faust is an individual and an artist, d/b/a Purgatory Pie Press and is a co-author of the FIBONACCI FLOWER Work identified herein and has a place of business located at 19 Hudson Street, Suite 403, New York, New York, 10013.
11. Defendant Anthropologie, Inc. is a Pennsylvania Corporation with its principal place of business at 5000 South Broad Street, Philadelphia, Pennsylvania, 19112-1495.
12. Defendant Anthropologie is a wholly owned subsidiary of Urban Outfitters, Inc., a Pennsylvania Corporation, having a principal place of business at 5000 South Broad Street Philadelphia, Pennsylvania, 19112-1495.
13. Defendant Anthropologie is authorized by the New York Secretary of State to conduct business in New York State.
14. Defendant Anthropologie maintains retail stores throughout the United States having at least six (6) retail stores in New York State, including one within the Eastern District.
15. Anthropologie is a designer and manufacturer of clothing, personal accessories, and home decorating products, which it sells at its many retail locations around the country.
16. Anthropologie further conducts business on the Internet, via an online Internet store, located at <http://www.anthropologie.com>.

FACTS COMMON TO ALL CLAIMS

17. Plaintiff is engaged in the business of designing, creating, producing, and marketing art works in the form of, *inter alia*, hand-printed, limited-edition books, examples of which may be seen at <http://purgatorypiepress.com/artistbooks.html>.
18. Plaintiff created and is the exclusive owner of all rights, titles and interests in and to the copyrighted designs for the FIBONACCI FLOWER Work.
19. Plaintiff is the owner of U.S. Copyright Registration, Serial No.: VA 1-659-243, a copy of which is annexed hereto as Exhibit A.
20. Plaintiff's Copyright is valid and subsisting.
21. Plaintiff is and has been, at all times alleged herein, the sole owner of all rights, titles and interests in and to the FIBONACCI FLOWER work
22. Plaintiff has sold and continues to sell and derive significant revenue from the sale of art works and limited-edition art books, including the FIBONACCI FLOWER Work identified herein. A showing of the FIBONACCI FLOWER Work is annexed hereto as Exhibit B.

DEFENDANT'S ACTIONS

23. On or about October 24, 2008, a group of representatives from Defendant's parent company, Urban Outfitters attended the New York Artist Book Fair ("Fair"), where Plaintiff's FIBONACCI FLOWER Work was on display, a showing of which is annexed hereto as Exhibit C.
24. Representatives from Anthropologies parent company, Urban Outfitters, Inc. had access to Plaintiff's Work and copied Plaintiff's work, in that, Plaintiff was observed

surreptitiously taking pictures of Plaintiff's FIBONACCI FLOWER Work using small digital cameras and mobile telephone cameras.

25. Defendant's access and viewing of Plaintiff's Work is clearly demonstrated by the entry of a signature and contact information set down in Plaintiff's visitor guestbook by Ms. Alana Mclean (amclean@urbanout.com), a showing of which is annexed hereto as Exhibit D.
26. Defendant Anthropologie subsequently created its COLOSSAL BLOOM RUG ("Rug") using an unauthorized copy of the FIBONACCI FLOWER Work, showings of which, together with a side-by-side, split-image comparison are annexed hereto as Exhibit E.
27. Defendant Anthropologie has not sought permission to use Plaintiff's Work or otherwise purchased a license to use the FIBONACCI FLOWER Work as a resource for the creation of its Rug.
28. Defendant Anthropologie's copying of the FIBONACCI FLOWER Work is an infringement of Plaintiff's valid copyright.
29. The natural, probable and foreseeable result of Defendant's wrongful conduct has, and continues to be, to deprive Plaintiff of the benefits and revenue from the sale of licenses to use the FIBONACCI FLOWER Work and injury to Plaintiff's relationships with present and prospective customers.
30. Plaintiff has lost, and will continue to lose, substantial revenue from Defendant's wrongful and willful actions complained of herein.
31. Defendant's wrongful conduct has deprived, and will continue to deprive, Plaintiff of opportunities for expanding the goodwill associated with the FIBONACCI FLOWER Work.

32. Defendant has refused to cease and desist from infringing upon Plaintiff's valuable copyright despite demands for such action.

**FIRST CAUSE OF ACTION
COPYRIGHT INFRINGEMENT
17 U.S.C. § 101**

33. Plaintiff repeats and realleges each and every allegation of the Complaint as set forth in Paragraphs 1 through 32, inclusive, and incorporates them herein by this reference.
34. Defendant Anthropology has infringed and will continue to infringe Plaintiff's valuable copyrights in and to the FIBONACCI FLOWER Work.
35. Plaintiff is further entitled to recover damages it has sustained and will continue to sustain, together with any gains, profits, and advantages obtained by Defendant as a result of the acts of infringement alleged herein, as well as attorneys' fees.
36. At present, the amount of such damages, gains, profits, and advantages cannot be fully ascertained by Plaintiff, but they are believed to be not less than \$150,000.
37. Plaintiff has no adequate remedy at law.

**SECOND CAUSE OF ACTION
UNFAIR COMPETITION
15 U.S.C. §1125(a)**

38. Plaintiff repeats and realleges each and every allegation of the Complaint as set forth in Paragraphs 1 through 37, inclusive, and incorporates them herein by this reference.
39. Defendant Anthropologie's unauthorized use and distribution of designs using the FIBONACCI FLOWER Work and the creation of unauthorized derivative works in connection with creation and sale of its clothing, rugs, personal accessories and home decorating products, constitutes false advertising, false designation of origin, and false

descriptions and representations that falsely describe and represent Defendant's goods and/or services as being connected, endorsed or otherwise associated with Plaintiff, and by reason thereof, creates a false description or representation in interstate commerce in violation of 15 U.S.C. § 1125(a).

40. By reason of Defendant's actions, Plaintiff has been and will continue to be so damaged.
41. Plaintiff is further entitled to recover damages it has sustained and will continue to sustain, together with any gains, profits, and advantages obtained by Defendant as a result of the acts of infringement alleged herein, as well as attorneys' fees.
42. At present, the amount of such damages, gains, profits, and advantages cannot be fully ascertained by Plaintiff, but they are believed to be not less than \$150,000.
43. Plaintiff has no adequate remedy at law.

**THIRD CAUSE OF ACTION
DILUTION IN VIOLATION OF NEW YORK
STATE GENERAL BUSINESS LAW §360-1**

44. Plaintiff repeats and realleges each and every allegation of the Complaint as set forth in Paragraphs 1 through 43, inclusive, and incorporates them herein by this reference.
45. Defendant Anthropologie has been, and continues to be, engaged in unfair and deceptive practices in violation of Section 360-1 of New York State General Business Law.
46. By reason of Defendant's acts, Plaintiff has been seriously and irreparably injured, and unless Defendant is restrained, Plaintiff will continue to be so damaged.
47. Plaintiff is further entitled to recover damages it has sustained and will continue to sustain, together with any gains, profits, and advantages obtained by Defendant as a result of the acts of infringement alleged herein, as well as attorneys' fees.

48. At present, the amount of such damages, gains, profits, and advantages cannot be fully ascertained by Plaintiff, but they are believed to be not less than \$150,000.
49. Plaintiff has no adequate remedy at law.

WHEREFORE, Plaintiff respectfully requests and prays that this Court will:

1. Preliminarily and permanently enjoin and restrain Defendant, its associated and parent companies, their officers, directors, principals, agents, servants, employees, successors, assigns and all those in active concert or participation with it from:
 - (a) imitating, copying, distributing, or making unauthorized use of Plaintiff's Registered Copyright including the infringing use of the FIBONACCI FLOWER Work and the artwork and designs embodied therein;
 - (b) manufacturing, creating, producing, advertising, promoting, or displaying any products bearing any simulation, reproduction, counterfeit, copy, derivative version, or colorable imitation of Plaintiff's Copyrighted Work or the designs and artworks embodied therein;
2. Direct that Defendant deliver for destruction at Defendant's expense, *inter alia*, all designs, pictures, and all other recorded media together with all other items, including but not limited to clothing, personal accessories and home decorating products and Rugs in its possession or under their control that were created using Plaintiff's Copyrighted Work or the designs and artworks embodied therein;
3. Direct that Defendant be required to pay Plaintiff damages in the amount of one hundred and fifty thousand dollars (\$150,000) dollars, for all gains, profits and advantages derived by Defendant through their ongoing infringement of Plaintiff's Copyright;

4. Direct that Defendant be required to pay to Plaintiff such other damages that it has sustained as a consequence of Defendant's unauthorized use, copying and distribution of infringing copies and derivative works based upon Plaintiff's Copyrighted Work;
5. Direct the imposition of a constructive trust for all monies received by Defendant from the sale of all goods that are an infringing copy and/or unauthorized derivative works based upon Plaintiff's Copyrighted Work;
6. Direct that Defendant be ordered to make a written report within a reasonable period of time to be filed with the Court detailing the manner of compliance with the requested injunctive and mandatory relief above;
7. Award Plaintiff punitive damages for the willful infringements identified herein;
8. Award Plaintiff the costs of this action together with reasonable attorneys' fees; and
9. Award Plaintiff such other and further relief as the Court may deem just and proper.

JURY DEMAND

Plaintiff hereby demands a trial by jury.

Dated: April 14, 2009

Respectfully submitted,
THE MARTINEZ GROUP PLLC

By:

Frank J. Martinez (FJM-2149)
Attorneys for Plaintiffs
Susan Happersett,
Esther K. Smith, d/b/a, Purgatory Pie Press
Dikko Faust, d/b/a, Purgatory Pie Press

THE MARTINEZ GROUP PLLC
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Brooklyn, New York 11201
718.797.2341 Telephone
718.222.0481 Facsimile
FM@martinezgroup.com

Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, *United States Code*, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Marybeth Peters

Register of Copyrights, United States of America



Registration Number:

VA 1-659-243

**Effective date of
registration:**

February 13, 2009

Title

Title of Work: FIBONACCI FLOWER

Completion/Publication

Year of Completion: 2006

Date of 1st Publication: June 15, 2006

Nation of 1st Publication: United States

Author

- **Author:** Susan Happersett
Author Created: 2-dimensional artwork
Citizen of: United States
Year Born: 1963
- **Author:** Esther K Smith, dba PURGATORY PIE PRESS
Author Created: 2-dimensional artwork
Citizen of: United States
Year Born: 1956
- **Author:** Dikko Faust, dba PURGATORY PIE PRESS
Author Created: 2-dimensional artwork
Citizen of: United States
Year Born: 1952

Copyright claimant

Copyright Claimant: Susan Happersett
19 Hudson Street, Suite 403, New York, NY, 10013, United States

Copyright Claimant: Esther K Smith, dba PURGATORY PIE PRESS
19 HUDSON STREET, Suite 403, New York, NY, 10013, United States

Copyright Claimant: Dikko Faust, dba PURGATORY PIE PRESS

19 HUDSON STREET, SUITE 403, NEW YORK, NY, 10013, United States

Certification

Name: Frank J. Martinez, Esq.

Date: April 2, 2009

Applicant's Tracking Number: 1235-1

Correspondence: Yes

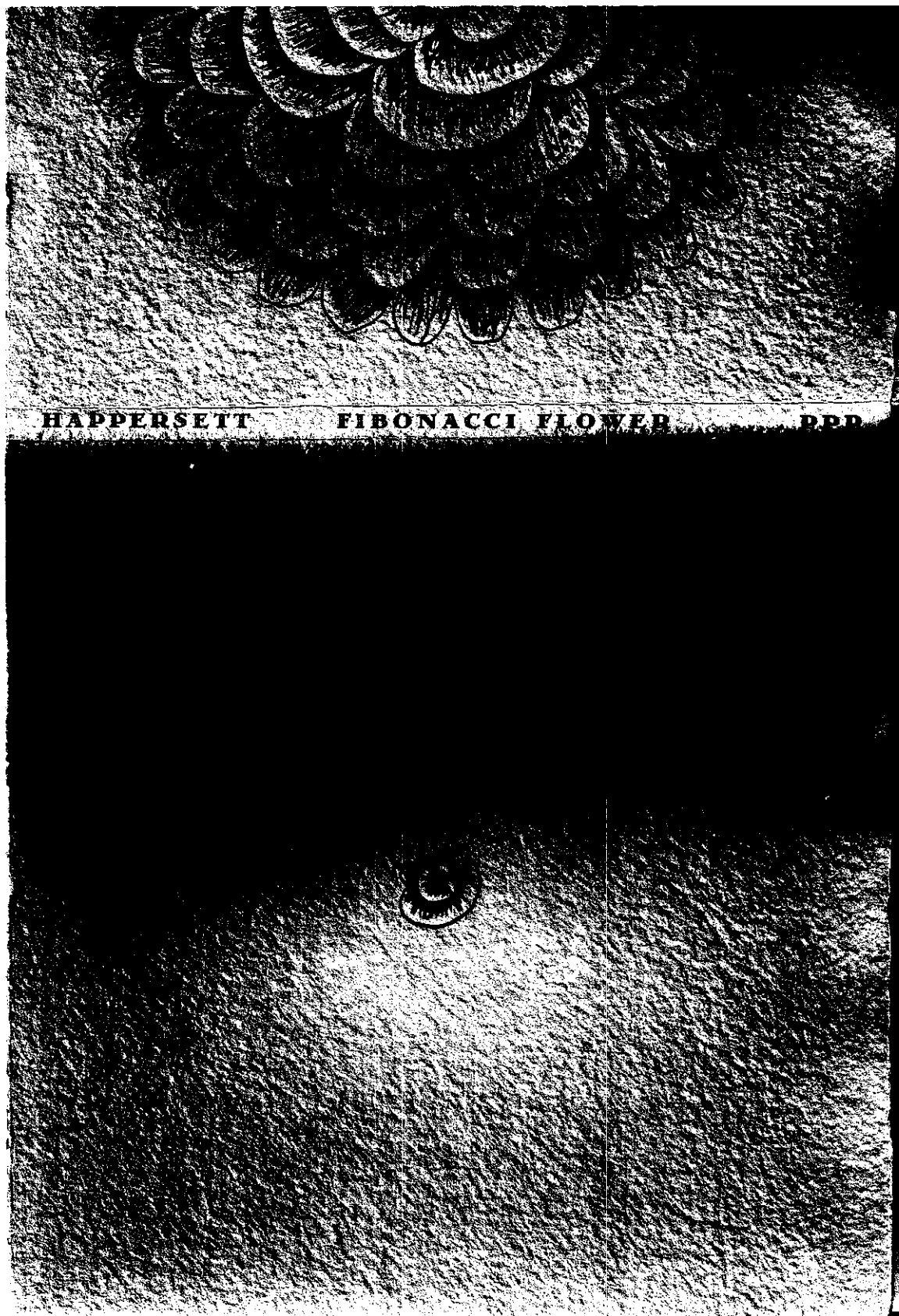
Susan Happersett



FIBONACCI
FLOWER



Purgatory Pie Press
New York City



design & structure
Esther K Smith

letterpress
&
hand typography
Dikko Faust

SKS *Susan Happersett* *Dikko Faust*

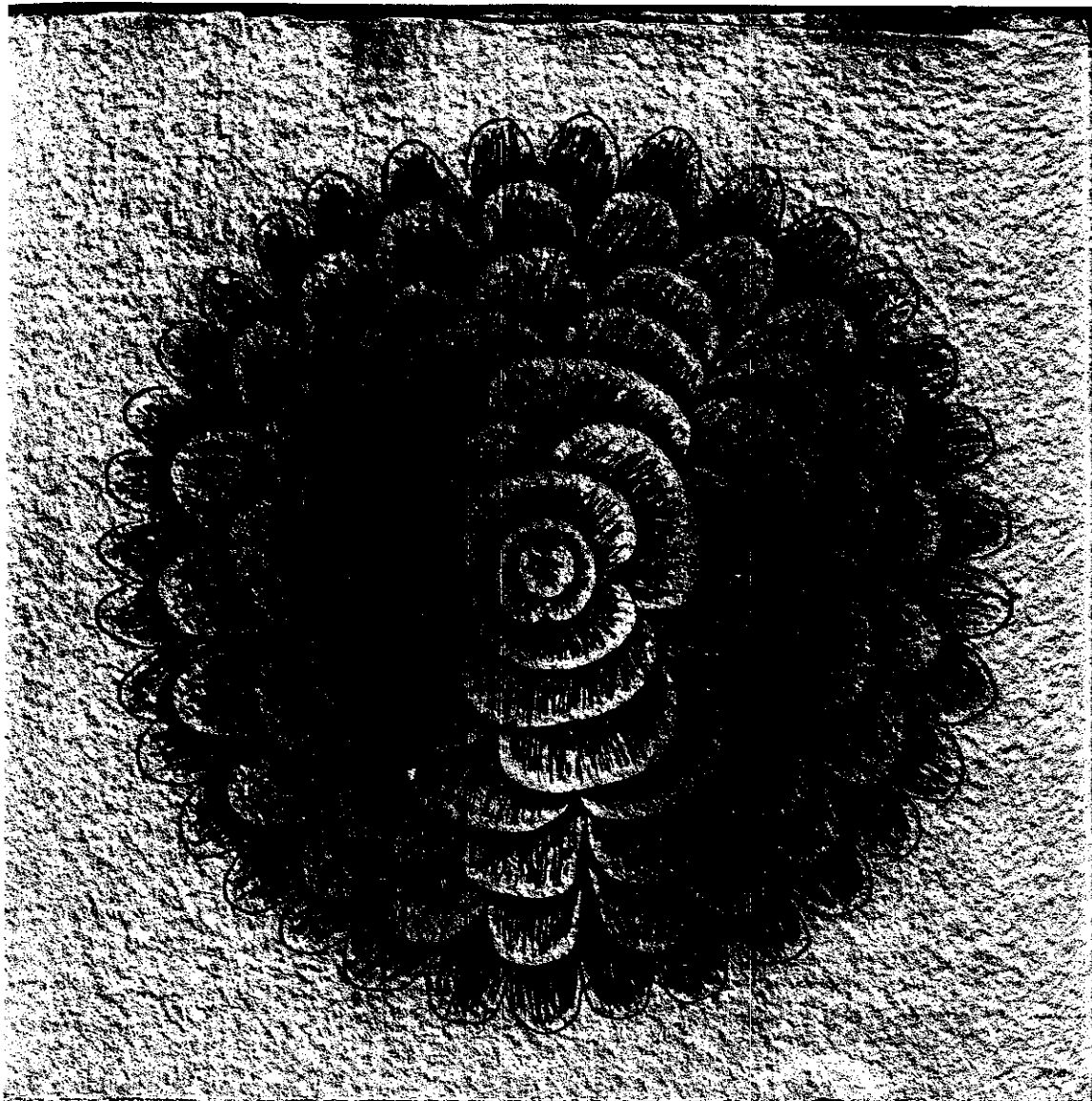
hand generated flowers
from the Fibonacci number sequence
Susan Happersett

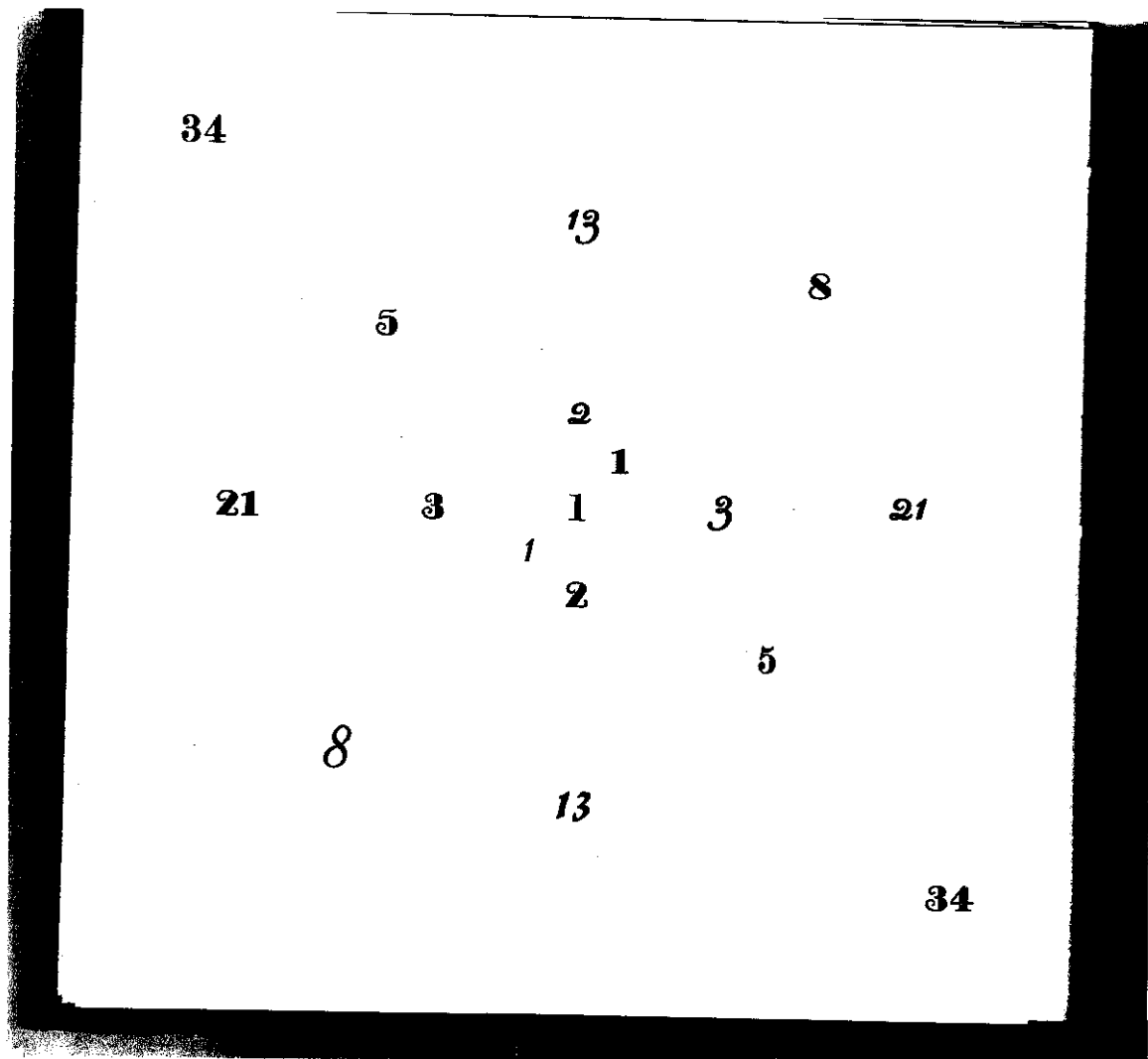
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Printed Matter's annual fair of contemporary art books, art catalogs, artists' books, art periodicals, and 'zines offered for sale by over 140 international publishers, booksellers, and antiquarian dealers. Admission to the fair is FREE.

LOCATION
 Philipps de Pury & Company
 450 West 15th Street at 10th Avenue, 3rd floor, NYC
 (map)

FAIR HOURS
 Friday/Saturday, October 24 & 25, 2008, 11am - 7pm
 Sunday, October 26, 2008, 11am - 5pm


Admission to the NY Art Book Fair is free.

BENEFIT PREVIEW
 6 - 9 pm, Thursday, October 23, 2008
 \$20 - general admission *plus*
 ticket edition by Jonathan Monk

\$150 - general admission *plus*
 "I Married an Artist," by Anne Collier and Matthew Higgs, edition of 150

Both levels benefit Printed Matter, Inc.

NY ART BOOK FAIR COMMITTEE
 Philip Aaronson, AA Bronson, Skuta Helgason,
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AA Bronson, Philip Aaronson and John McWhinnie
 at the Benefit Preview of the 2008 NY Art Book
 Fair

RE: revisions - Message ... Martinez Group Verizon ... WORLDFOX GX Microsoft Excel - 1005-1... 1235-2 PIP v Anthropolo... Document2 - Microsoft ... iTunes

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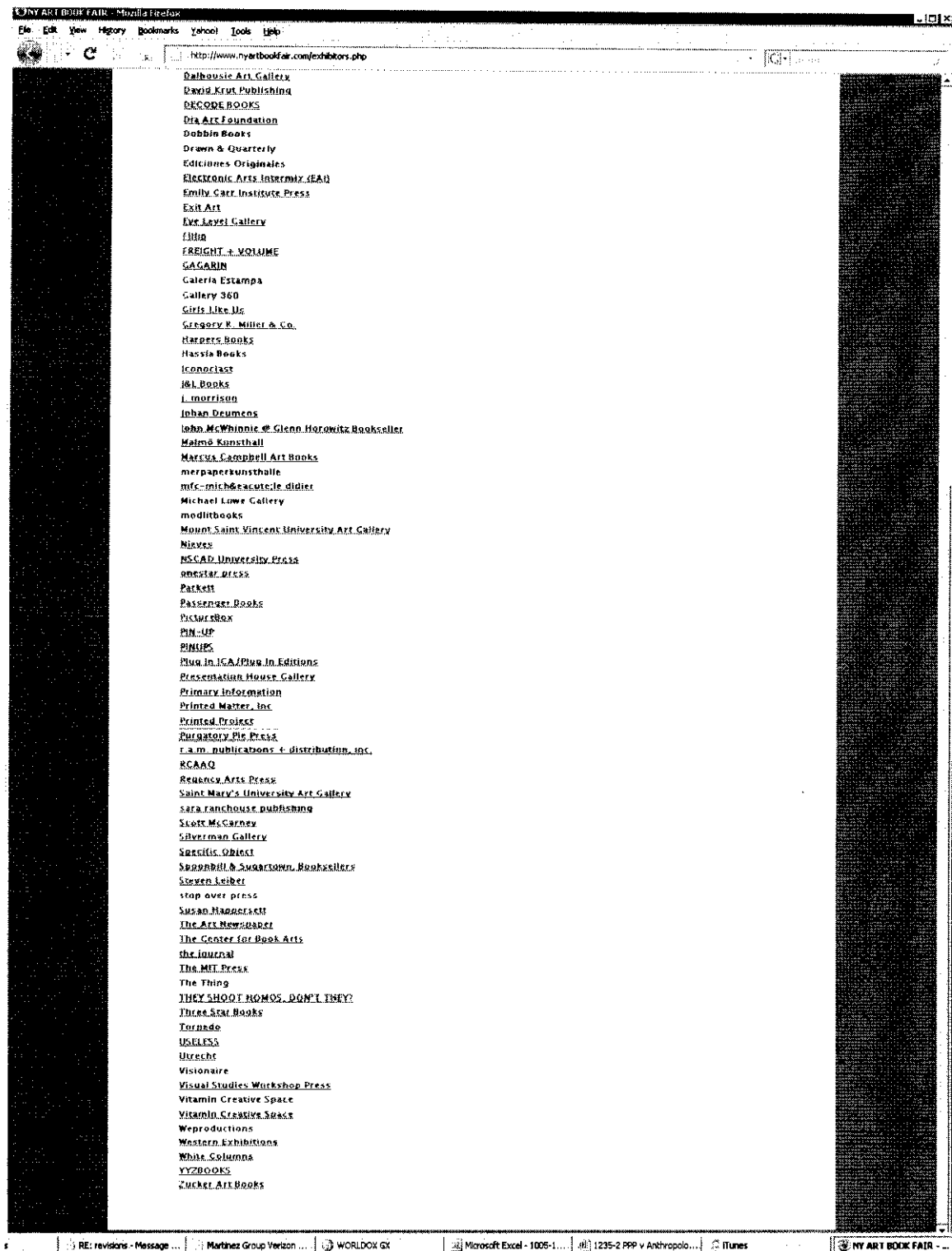
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I love your work!

are the best -

Alexa McLean

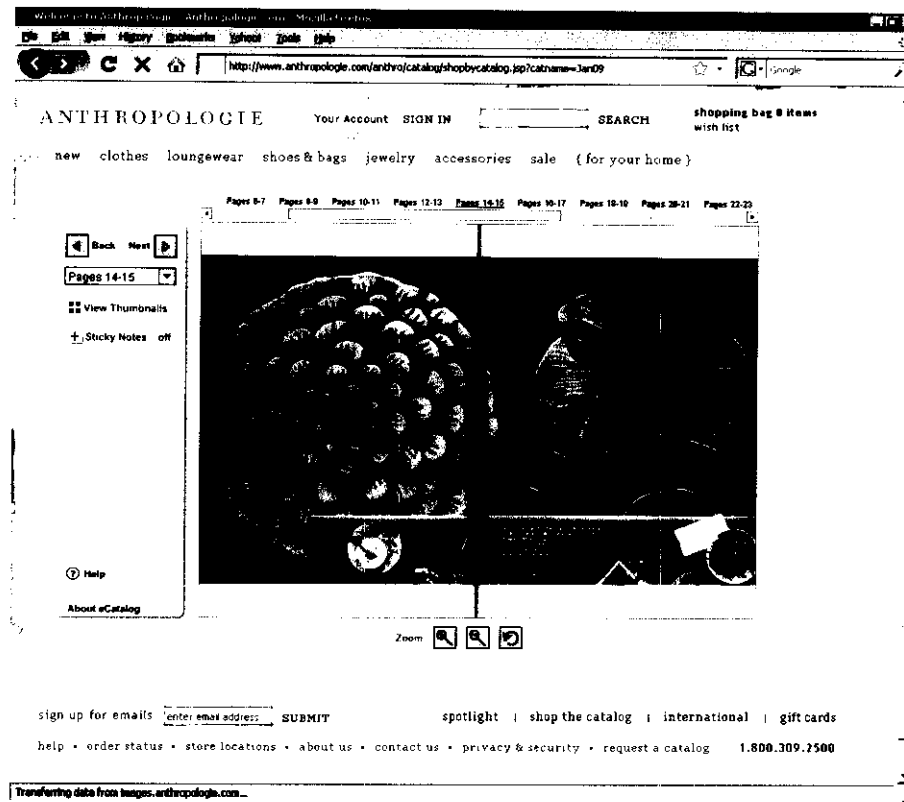
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you guys are the
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D. Regan

KristaValbona.com

Juan Roman Art Institute of NYC



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Colossal Bloom Rug, Rouge

Giant, handcrafted petals of tufted wool bring the great outdoors into your living space.

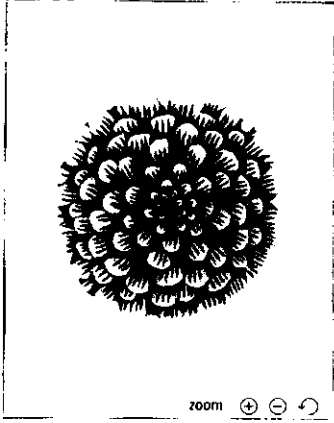
- Wool; cotton backing
- Dry clean
- Imported

An additional \$30 will be added for shipping and handling of 8' rugs. These oversized items will ship via UPS Ground and are only available for delivery within the continental United States. Shipment to international locations, U.S. territories, AK, HI, P.O. boxes, APO/FPO addresses and express ship methods are unavailable for these items.

~~\$199.00~~ **\$999.00**

selected color: **red**


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COLOSSAL BLOOM RUG, ROUGE

style #623357

Colossal Bloom Rug, Rouge



selected: **red**

size:			qty
3'5' ROUND	\$199.00		0
5' ROUND	\$399.00		
8' ROUND	\$999.00		

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